

[Advisory Opinion 1998-6]

MONTGOMERY COUNTY ETHICS COMMISSION

ADVISORY OPINION

May 18, 1998

In October, 1997 a public official requested permission to accept outside employment, to be performed at the official's home or in the Circuit Court Bar Library, as a law clerk for a local, solo practitioner. The Commission approved the request with the following conditions:

1. That the official not participate, as an outside employee, in any matter (litigation, lobbying, counseling or other representation) involving:
 - (a) Montgomery County, MD;
 - (b) an officer, employee or unit of Montgomery County, MD; or
 - (c) any other public officer, employee, agent or agency funding, in whole or in part, by Montgomery County, MD.
2. That the outside employer must implement administrative "walls" that would effectively insulate the official from participating in such matters;
3. That, except as provided in §19A-11(b)(1), the official not participate as a county employee in any matter that affects the solo practitioner, either directly as a business entity or indirectly in its representation of a client, unless the official applies for and receives a waiver from the Commission with respect to the particular matter;
4. That there be compliance with all other applicable provisions of the Ethics Law; including, by way of example but not limitation, the prohibition of the intentional use of the prestige of the official's office for his private gain or that of another (§19A-14) and the prohibition of the disclosure of confidential information (19A-15).

On January 30, 1998, the official requested an opinion regarding his ability to work in his outside employer's office. That office is leased to the solo practitioner by the law firm (the "landlord firm"), whose attorneys practice before the public body on which the official serves on a regular basis. In the January request, the official indicated that:

1. The arrangement with the landlord firm gives his employer access to the use of duplication equipment, fax machines, the library and the receptionist for clients

present in the office, but not to answer the employer's telephone. This same access is available as well to the public official.

2. Other than the lease, there are no financial arrangements between the solo practitioner and the landlord firm or their personnel.
3. The landlord firm and the official's employer refer clients to each other in cases of conflict of interest or lack of expertise. In these matters the landlord firm and the employer work as co-counsel; however, the official will not be involved in any such case.
4. The landlord firm and the official have agreed to avoid any discussion or participation in the office relating to any matter which might be before the official's public body on which the official serves or would be seen to be a potential conflict as well as implement "administrative walls" to insulate the official from participation in such matters.

The Montgomery County Public Ethics Law is founded on the following express legislative findings and statement of policy:

- (a) Our system of representative government depends in part on the people maintaining the highest trust in their officials and employees. The people have a right to public officials and employees who are impartial and use independent judgment.
- (b) The confidence and trust of the people erodes when the conduct of County business is subject to improper influence or even the appearance of improper influence.
- (c) To guard against improper influence, the Council enacts this public ethics law. This law sets comprehensive standards for the conduct of County business and requires public employees to disclose information about their financial affairs.
- (d) The Council intends that this Chapter, except in the context of imposing criminal sanctions, be liberally construed to accomplish the policy goals of this Chapter.

Montgomery County Code, §19A-2.

Section 19A-12(a) of the Ethics Law generally prohibits county employees, including the official, from engaging in any other employment unless the employment is approved by the Commission, and authorizes the Commission to impose conditions on its approval of such other employment.

The Commission considered the information provided by the official. However, in light of the legislative findings and policy underlying the Ethics Law and the prohibitions on conflicts of interest, the Commission determined that in order to avoid any actual, potential or apparent conflict of interest, the official must recuse himself on every matter before the public body on which he serves in which the landlord firm or any of its attorneys is involved.